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Developing a Scenario-Based Training Program *Giving Officers a Tactical Advantage*

By MICHAEL D. LYNCH

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The nighttime darkness splinters with the rhythmic pulsing of red and blue strobe lights. The cruiser's spotlights focus on the passenger compartment of a vehicle with three occupants. The driver watches the officer from the side mirror as he exits the patrol unit, but the passengers' furtive movements cause the officer to pause. Having radioed his location to the dispatcher, he now requests any available backup and takes a new position, using his cruiser as cover.

The officer tells the driver to turn off the ignition and drop the keys out of the driver's side window. He complies. The officer then instructs him to stick both of his hands out of the window, open the door from the outside latch, and exit the vehicle. The driver, approximately 6' 4" in height and weighing nearly 300 pounds, obeys. The officer orders him to raise his hands above his head, which he does, but his jacket conceals his midsection. Next, the officer tells the driver to

unzip his jacket with his left hand. As the driver does so, the officer notices the front passenger door starting to open and commands the passenger to close it and remain in the vehicle. The passenger complies. The officer unsnaps his holster and instructs the driver to slowly turn until he tells him to stop. The driver makes one complete revolution. Then, the officer directs him to use his left hand to lift the jacket away from his body and to continue to turn until ordered to stop.



Sergeant Lynch is the curriculum coordinator and an instructor at the West Virginia State Police Academy in Charleston.

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The goal with scenario-based training is to give officers skills and abilities that they can use in any encounter.
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The driver obeys. The officer commands him to repeat the procedure with his right hand, which he does. The officer tells the driver to keep his hands in the air, to turn and face away from him, and to walk slowly backward toward the sound of his voice. Again, the driver obeys. At this point, the officer realizes that the driver has complied with all of his requests but has not said a word. The officer instructs him to stop and get down on his knees. The driver states that he has bad knees and will not comply. At this time, both doors of the vehicle suddenly open and the two passengers begin to exit the vehicle. The officer immediately changes his position, draws his service weapon, and orders all three men to keep their hands visible and get on the ground face down. The two passengers begin to comply, but

the driver turns suddenly and confronts the officer with a knife drawn from his jacket sleeve. But, to his surprise, he finds that the officer is no longer where he thought he was standing. The cruiser's lights still illuminate all three subjects, but the officer has tactically disengaged into the refuge of the darkness. The officer orders the driver to drop the knife, but he refuses and moves menacingly toward the direction of the officer's voice. The officer fires three shots, fatally wounding him in the chest, and commands the two passengers to remain motionless on the ground. Moments later, backup officers arrive and take the two subjects into custody without further incident.

A search, incidental to arrest, results in removing several weapons from the passengers and the driver. The

officers seize a large sum of money and a vast amount of various controlled substances from the vehicle. An interview with the two passengers discloses the plot. While complying with the officer's orders, the driver would try to narrow the distance between them. When he got as close as he could, he would signal the passengers to get out of the vehicle by responding verbally to the officer. The plan was simple: minimize the distance, distract the officer, and then kill him.

This deadly charade plays almost nightly on the streets of America. In this case, the officer was lucky. But, can law enforcement officers always rely on luck to be with them to ensure their safe return home at the end of each shift? The question is not rhetorical. Rather, it reveals an abundantly clear need: officers must prepare for life-threatening events. That preparation involves scenario-based training because, as experienced officers know, the one with the best plan, along with a survival mind-set and a strong will to succeed, usually wins.

UNDERSTANDING THE CONCEPT

The world has changed dramatically since September 11, 2001. Now, more than ever, Americans have to consider the

mind-set of the adversaries who have breached this nation's borders. What are their ideologies? What are they trying to accomplish? What are their motivations? What are they willing to risk or sacrifice? Are this country's law enforcement organizations willing to meet that level of risk or sacrifice to stop them? The view of law enforcement must change. The profession now must become more insightful, intuitive, and proactive in not only enforcing laws but also in preventing major critical events. This will require using all of the training, knowledge, skills, and abilities that it has acquired, as well as developing new strategies and techniques.

Scenario-based training is an amalgamation of knowledge and skills-based training. It incorporates psychomotor coordination and reinforces a survival mind-set in the student. Just as new officers cannot learn how to use a firearm in a classroom setting without practical shooting exercises on the range, they also cannot know how to handle a hostile, fast-paced situation without training in a realistic, dynamic setting.

Training always should be designed and developed to give officers the skills to successfully complete a task. General training, therefore, can be broad in scope, as in teaching criminal

law. Rather than teaching all of the particular ways a specific crime is committed, the more effective means involves teaching the elements that constitute the crime. Then, officers can recognize those factors present in any given situation that show a crime occurred. The goal with scenario-based training is to give officers skills and abilities that they can use in any encounter.

“Defining training objectives at the beginning actually will lay the foundation of a scenario-based training program.”

Sadly, stories abound about officers in the field picking up their shell casings after discharging their firearms or firing two rounds and then immediately returning their weapons to their holsters. Why would officers do these things? Because they practiced that way. This bears witness to the fact that officers in the field will revert to their training, even though it may incorporate hazardous dynamics. With this in mind, officers must develop critical skills and abilities that

will transfer into the field when called upon. Officers' abilities to think, move, and react prove critical to their survival. Likewise, an evaluation mechanism is crucial for measuring the desired skills and abilities and identifying any undesirable actions. The evaluation always should incorporate a critique where students receive an objective, constructive summary of their performance.

ESTABLISHING TRAINING OBJECTIVES

The best place to start is at the end. This means listing all of the goals and objectives that students should meet by the end of the training and then working toward them. Defining training objectives at the beginning actually will lay the foundation of a scenario-based training program. Using the traffic stop from the beginning of this article as an example, the officer would have to have a base knowledge of motor vehicle and criminal law, handcuffing and mechanics of arrest, and use of force and the implementation of intermediate and deadly force weapons. The officer also would need to know how to identify warning signs, or “red-flag” behavior, and how to properly approach a stopped vehicle. Developing a training scenario with the example given would require establishing some basic objectives.

Officer Safety

The officer stopped his approach when he noticed the furtive movement and red-flag behavior of the vehicle's passengers. His use of cover and concealment further enhanced his safety. This objective is paramount. Building officer's cognitive skills, perceptions, and understanding of tactics and safety should become the foundation of any scenario-based training program.

Knowledge of Law

The officer had to have a basis or probable cause for the stop or other violations committed during it, as well as a knowledge of authority. Obviously, to enforce the law, officers must know the law. Scenarios should incorporate multiple events and violations

to test officers' abilities to discern which charges may apply.

Interpersonal Skills

The officer clearly communicated what he expected or wanted to happen by directing specific commands to the driver and passengers. Communication is critical, not only for conveying directions or commands but also for actively listening for responses. Officers' abilities to hear and perceive threats and to verbally control and manage the scene constitute major factors. People usually "size up" officers by their abilities to vociferate and take command of a situation. This skill comprises a component of "officer presence."

Subject Control

The officer controlled the situation through careful

monitoring of the subjects' actions and responses to his commands. The bottom line is that officers must have the skills and abilities to physically control or subdue an offender. Unfortunately, many of the methods and techniques employed in physically subduing and controlling a person require frequent practice and numerous repetitions. Handcuffing, for example, can cause problems for some officers. This is a daily activity for them; however, they can fall into bad habits without refresher training to hone their skills.

Use of Force

The officer used the appropriate force necessary to neutralize the threat posed by the driver and his passengers. Knowing what appropriate force level to use in a given situation becomes an issue of safety and liability. The general guideline is what is deemed reasonable.¹ Many law enforcement agencies adhere to the "plus one" theory of an officer going to the next higher level of force than that employed by the offender.

Officer Adaptability

The officer's ability to shift from a stationary point of cover to a tactical concealment in the darkness allowed him to maintain control of the situation. This often comprises a difficult area to help officers improve in

Safety Issues

- Employ safe props and training weapons; no live-fire weapons or munitions
- Define levels of role player resistance or aggression
- Use protective equipment
- Remove jewelry and other impediments
- Check site for hazards
- Post signs to designate training areas
- Have first-aid kits readily available

because it deals more with each person's experiences and cognitive processes. Because scene dynamics rarely are static but more fluid in nature, officers must have the ability to "change gears" as circumstances fluctuate. As the number of variables and stimuli increase, many officers find themselves unable to adapt and, unfortunately, can become more susceptible to violent attacks. Scenario-based training provides an arena for officers to safely practice such encounters.

Policy and Procedures

The officer demonstrated the importance of following his agency's policies and procedures by using emergency lights, radioing his location, and requesting backup assistance. Such actions usually are intended to protect officers and their agencies from liabilities. In the course of training, a scenario may develop not covered by a policy or procedure. If that occurs, creating one as a guide for officers to use in similar situations in the future can prove helpful.

Investigative Skills

The officer's subsequent investigation and search after the initial confrontation provided the impetus for the incident. Evaluating this area can ensure that officers are not missing or overlooking valuable evidence

not only through their observation skills but also via their abilities to interview and solicit the information needed.

ORGANIZING THE PROGRAM

Personnel Functions

The scenario-based training coordinator oversees the program, selects the facility or site, and prepares it for use. This person establishes the training goals and objectives, schedules the training, and ensures that the

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One of the first considerations in selecting a training site is identifying safety issues.

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facilitators and role players have everything they need to complete the training. The coordinator evaluates student performance, the effectiveness of the facilitators and role players, and the overall value of the training program. If deficiencies occur within the program, the coordinator must reevaluate and develop scenarios that will meet the desired training objectives.

Facilitators, who report to the coordinator, control the

scenarios and act as safety officers. If they determine that a scenario is becoming too volatile and the probability of an injury exists, then they must stop the training. They make sure that the training site is prepared and the role players understand the scenario's goals, objectives, and parameters. In addition, they evaluate the performance of the role players and the students, as well as critique the students at the end of each scenario and rate their performances of the established training objectives.

Role players, who report to the facilitators, take on a persona as needed by the scenario and create a realistic training dynamic. They provide hands-on experience for the students and deliver situational aspects within the set parameters of the scenario. At the completion of the scenario, they constructively critique each student's performance.

Site Preparation

One of the first considerations in selecting a training site is identifying safety issues. Poor lighting, exposed or malfunctioning electrical wires and appliances, loose debris, sharp corners, and other problems should be eliminated. The site should be equipped to meet the training needs. If funds exist, technological advances, such as cameras, monitors, and

Checklist for Developing a Scenario

Type of Scenario

- Area to be used
- Number of role players and facilitators needed
- Number of students to participate
- Props and other needed materials
- Time allotted per scenario
- Variables involved

Nature of Call

- Probable cause for arrest
- Demeanor of role player
- Level of resistance or aggression by the role player
- Specific dialogue

Parameters to Establish

- Define the training objectives
- Predetermine the desired results
- Select methods of evaluations

intercom systems, can help make the training more efficient. If the site also is used for other purposes, scheduling conflicts may arise, which will require attention.

Time Allocation

Time, because of its limits, must be managed carefully. Scenario setup time and turn-around time for the next one, which also includes the critique and reset time, must be factored into the program. The time required to execute a scenario will depend on its complexity

and the number of variables. As with all physical training, breaks must be structured to limit the amount of downtime.

Evaluation Methods

Evaluations can be completed in many ways, but they always must be constructive. After all, students attend training to learn and know that they will make mistakes. Therefore, critiques and evaluations never should demean or malign them. Rather, students need to know where they performed poorly and also where they did well.

The goal is to develop students to where they can evaluate their own performance and learn from their mistakes.

Each training objective should be evaluated as it relates to the specific scenario. The type of scale is not as important as the way it is used. Students should have their own individual evaluation sheet to track and document any areas where they need additional or remedial training. For example, a form with a field for each training objective using a rating scale of 1 to 5 (1 being poor, 3 being average, and 5 being outstanding or excellent) can work well. It also is important to solicit feedback from the students as to their views of the training program.

PREPARING THE PARTICIPANTS

Before they can train students, facilitators and role players must receive adequate instruction. Facilitators should be seasoned law enforcement officers with experience in training. Role players can be law enforcement officers or civilians. If the agency or training site is near a college or university, the scenario-based training coordinator may opt to contact the drama department and solicit students to perform as role players. The main consideration in using nonlaw enforcement personnel for training

is liability. Dynamic training involves certain inherent risks of injury, and role players must understand this. For civilian role players, a signed liability waiver may prove prudent.

Selecting the facilitators and role players will require considerable care as they will be directly responsible for the success or failure of the program. Both must thoroughly understand the safety issues and limit their actions to the desired scenario parameters. The role players specifically must not ad lib outside the boundaries of the scenario. Clearly designed training objectives for each scenario will help reinforce the training concept and ensure the program's success.

Obviously, students, especially entry-level ones, cannot participate in a scenario without the necessary knowledge, skills, and abilities to successfully complete the training. Student preparation is essential for both the success of a scenario-based training program and, more important, for an officer's survival in an actual deadly encounter. Such prior training should include physical conditioning; motor vehicle and criminal law; laws concerning arrests, searches, and seizures; use of force; subject control and mechanics of arrest; defensive tactics; weapons handling; radio and communication procedures; and crime scene investigation.

DEVELOPING THE SCENARIO

A great deal of consideration must go into the design and development of the scenario. Just as with establishing the training goals and objectives, the best place to start is at the end: what to measure or evaluate at the completion of the scenario. Officer safety issues, use of verbal direction and command, scene control, handcuffing techniques, and weapon handling and safety must appear in the scenario.

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Determining the scene parameters allows for planning every aspect of the scenario.

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The type of scenario could involve a traffic stop with a hostile driver, a domestic battery with an uncooperative victim, or possibly a drunk and disorderly subject who refuses to leave a bar; all can provide endless training situations. Determining the scene parameters allows for planning every aspect of the scenario. This includes role players having guidelines and exhibiting those characteristics that students should

respond to by vociferation or physical actions. Role players set the stage of the scenario by establishing facts upon which the students will then have to determine what action, if any, to take.

Scenarios can vary from basic and direct to detailed and elaborate. The important thing to keep in mind is what students should accomplish. The whole purpose of scenario-based training is to subject students to real-life situations in a controlled environment where they can learn. After all, lessons learned on the street often prove much more costly, possibly involving an officer's life.

FINDING THE RESOURCES

Obviously, a training program will require certain resources. Scenario-based training, however, can employ many of those that agencies already possess. The training area or facility represents a key element because it must allow for the creation of a realistic training environment. One cost-effective possibility is using a mobile home, possibly one seized as part of a drug forfeiture.

Other resources include training props and materials (e.g., household furnishings, training weapons and vehicles, protective clothing, first-aid kits, and two-way radios) and trained personnel. If possible,

agencies can allocate a portion of their training funds for a scenario-based program and acquire training props and materials over time. In addition, law enforcement grants can offer an alternative solution to funding issues.

CONCLUSION

In today's world of terrorism, law enforcement officers face many new threats that their training may not have covered. To counter this, scenario-based training offers realistic situations that officers can use to

hone their skills and learn new techniques.

Developing a successful scenario-based training program requires establishing firm training goals and objectives that provide officers with skills they can use to complete their tasks effectively and safely. Creating scenarios that incorporate these goals and objectives can allow officers to practice a variety of enforcement techniques and strategies in a safe environment. Such realistic training will give officers a tactical advantage when they face the rigors of

enforcing the law, safeguarding the public they serve, and, most important, protecting themselves from those intent on doing them harm. ♦

Endnote

¹ For additional information, see Thomas D. Petrowski, "Use-of-Force Policies and Training" (Parts One and Two), *FBI Law Enforcement Bulletin*, October 2002, 25-32, and November 2002, 24-32.

Sergeant Lynch presented an excerpt from this article at the Future of Law Enforcement Safety Training in the Face of Terrorism conference detailed in the September 2005 issue of the FBI Law Enforcement Bulletin.

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Missing Person



During the fall of 1995, Mr. Crist Nelson Dauberman, Sr., disappeared from his home in Spotsylvania, Virginia. Mr. Dauberman is on disability due to post-traumatic stress syndrome. Since his disappearance, his family has not heard from him. A National Crime Information Center (NCIC) search of its unidentified dead database met with negative results. A financial review did not reveal any activity on his Veteran's Administration account or any of his private accounts.

Description of Victim

NCIC Missing Person Number: M373634870

Name: Crist Nelson Dauberman, Sr.

Race: White *Sex:* Male

Age: 47 at time of incident

Date of Birth: 09/04/1948

Height: 5'10" *Weight:* 213

Hair Color: Brown *Eye Color:* Green

Tattoo: "Wendy" on left arm (text)

Fingerprint Code: PI 07 14 13 17
PI 12 12 17 14

Pattern: WU RS RS RS RS WU LS LS LS LS
RS AU WU WU WU

Place of Birth: Lock Haven, PA

Alert to Law Enforcement

Law enforcement agencies should bring this information to the attention of all crime analysis units, officers investigating crimes against persons, correctional custody units, and missing persons units. Any agency with information regarding this missing person may contact either Detective Greg Carter of the Spotsylvania County Sheriff's Office, Spotsylvania, Virginia, at 540-582-7200, ext. 277, or gcarter@spotsylvania.va.us; or Crime Analyst Glen W. Wildey, Jr., of the Violent Criminal Apprehension Program (ViCAP), Federal Bureau of Investigation, at 703-632-4166 or gwildeyj@leo.gov.

Gratuities

There is No Free Lunch

By Mike Corley

I have spent the past 30 years in two Texas law enforcement agencies. The first was in a city of about 100,000 where I served 4 years. Then, I moved to Richardson, Texas, a Dallas suburb with a population of approximately 90,000 where I have been since 1980.

The policies regarding gratuities vary in each law enforcement agency. When I worked in the first department, gratuities, such as free coffee and half-price meals, were acceptable—a common practice for the entire staff. They were not hidden or considered a secret. For the most part, I never hesitated to accept them while I worked there.

The Richardson Police Department (RPD), on the other hand, is completely different. They do not allow any gratuities or law enforcement discounts. The policy in Richardson—a bit of a culture shock—forced me to make a major adjustment. Therefore, I have arrived at my opinions on gratuities after seeing both sides of the issue firsthand.

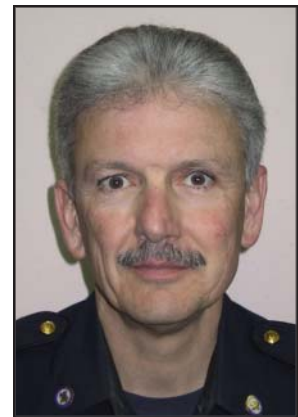
The matter of gratuities needs more attention—law enforcement officers face this situation every day, but few written opinions exist devoted primarily to this topic. Gratuities are a sensitive topic that few people want to address. Authors write against the dangers of corruption and its unethical genre. Many officers take a stance against corruption, but taking one against gratuities proves much more difficult.

Investigators want to answer the basic questions of who, what, when, where, why, and how. Who relates to all law enforcement officers and how gratuities apply to them. What are gratuities and corruption. When is past, present, and, especially, the future. Where applies to law enforcement everywhere. Corruption and gratuities concern law enforcement personnel all over the globe, although cultural differences may be a major factor

regarding accepting gratuities in other countries. How and why are the hardest questions to answer because no clear cut rules or boundaries exist for them when addressing gratuities.

Many scholars and practitioners claim that accepting gratuities is a precursor to corruption. While I do not disagree with this point of view, I have other opinions about this theory. In addition, I offer four experts' definitions of corruption.¹ First, M. McMullan stated, "A public official is corrupt if he accepts money or money's worth for doing something he is under a duty to do anyway, that he is under a duty not to do, or to exercise a legitimate discretion for improper reasons." Second, H. Cohen and M. Feldberg advised, "Corruption involves accepting goods or services for performing or failing to perform duties which are a normal part of one's job. What makes a gift a gratuity is the reason it is given; what makes it corruption is the reason it is taken." Third, J. Kleinig said, "Police officers act corruptly when, in exercising or failing to exercise their authority,

Assistant Chief Corley serves in the Richardson, Texas, Police Department.



they act with the primary intention of furthering private or departmental/divisional advantage.” Finally, H. Goldstein defined it as “the misuse of authority by a police officer in a manner designed to produce personal gain for the officer or for others.” I prefer the first definition, published over 40 years ago. There is no minor corruption—any and all corruption is major.²

Gratuities and Gifts

A gratuity, as it applies to this article, is “something given without claim or demand.”³ Is something truly given to an officer in that context? I define gratuity, as it relates to law enforcement officers, as a “perk” of the job, presented primarily for appreciation and easily justified by the officer and the presenter. Conversely, gratuities and gifts are completely different, and officers must understand that distinction. A gift is “something given voluntarily without payment in return, as to show favor toward someone, honor an occasion, or make a gesture of assistance; present.”⁴ One-time offers of appreciation are considered gifts, such as an item given to an instructor at the citizen’s police academy (CPA) graduation banquet. Is it improper for an officer to accept a token of appreciation from the CPA students? Or, perhaps a Neighborhood Watch group gives an officer a coffee mug in recognition for an outstanding presentation. In both examples, I believe that the acceptance of these gifts is proper. Officers can accept the gift—a sincere, one-time token of appreciation—with reverence and dignity.

Is there such a thing as a free cup of coffee? Or, do people and businesses expect something in return? Individuals in the private sector probably will say that no such thing as a free cup of coffee or lunch exists. Everybody wants something and nothing is free. This also applies to officers on their

jobs. Does the store owner really expect nothing in return for that coffee? Probably not. Sometime, and it might be next week, a year, or maybe even 2 years, that owner will want something. He might not ask for a major act of corruption, but he will probably ask, at the very least, for some type of special treatment. Nothing is free; everything comes with a price, which, for free coffee and half-price meals, is an officer’s dignity. On the other hand, I believe some people truly want to help the police with nothing expected in return. But, the task of trying to identify them proves too great.

Officers should assume that everyone expects something for a gratuity, rather than attempt to identify the honest ones. This is not a pleasant stance to take, but the alternative is far too risky.

The Slippery Slope Theory

E. Delattre suggested that officers who accept gratuities start down a road that leads to corruption—the primary reason that law enforcement administrators must take a stand against such

acts.⁵ Why must we only be concerned with gratuities if they lead to corruption? Throughout my research, I found many authors who quoted and agreed with Delattre’s theory of the slippery slope. But, what if we discovered that gratuities did not lead to corruption? Does that mean that accepting gratuities would be appropriate? We should evaluate gratuities without the slippery slope theory—law enforcement should prohibit gratuities because it is the right thing to do.

Gratuities are not flattering to the law enforcement image. Officers who accept them lose respect with the community and for themselves. Years ago, maybe low pay and morale justified that half-price meal. But, today, law enforcement salaries are high enough for officers to pay their own way. We should not look for or accept what amounts to handouts in the eyes of the citizens we serve. Law

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**Gratuities are
not flattering
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law enforcement
image.**

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First Doubts

As a patrol officer from 1976 through 1980, I routinely accepted free coffee and half-price meals. I never knew about a conflict involving this action until I stopped “the CB guy.” In the late 1970s, citizens’ band radios, or CBs, were extremely popular with the general public. Many people, not just truck drivers, had them. Many officers had CB radios in their patrol cars. We talked to each other, citizens, and even offenders. While on patrol one day, I stopped a vehicle for a minor traffic violation—an expired inspection sticker. I approached the car, went through the customary procedures of a traffic stop, and wrote the citation while I stood beside the violator’s vehicle. As I asked the usual questions about name and address, the violator, who had been very friendly to this point, asked me if I was going to write him a citation. I replied, “Yes.” He then asked me if I knew that he owned a particular establishment that fixes police officers’ CBs for free. I replied that I did not know that (I was not familiar with the business), but that I was grateful for the service. Then, he asked, “Are you still going to give me a ticket?” I said, “Yes,” and he questioned why I would write a citation to someone who fixes CB radios for police officers. Without giving it much thought, I explained that if he was fixing the CBs for free and out of the kindness of his heart, I sincerely appreciated his kindness. But, if he was expecting something in return, he should charge all of us full price. This incident was the first time I considered the consequences of gratuities.

enforcement agencies should prohibit gratuities because they do not approve of the practice, not just because they fear the slippery slope.

Gestures of Kindness

By now, many people may incorrectly think that I am against any gesture of kindness from the public. Officers must not confuse kindness with gratuities. The kindness of a person offering officers coffee while they write a report at a restaurant table should not be confused with a gratuity. When people offer lemonade to patrol officers working radar, should they turn down these gifts? Any officer would be rude to refuse on the basis of not wanting a gratuity. Officers should accept these gifts with sincere appreciation for the giver. The key remains common sense, which may prove a major flaw in my argument. Common sense cannot be taught, but it can be learned by officers watching others in their departments—specifically, by observing leaders backed with easy-to-understand policies.

Potential Complications

Law enforcement agencies often find it hard to maintain a tight policy against gratuities. And, it usually proves harder on the officers themselves, rather than on management. Officers usually are embarrassed when they decline an offer of a half-price meal; it takes a lot of courage. Probably one of the most difficult aspects of a policy that prohibits gratuities is not the policy itself, but the problems officers encounter as they try to do the right thing.

In the early 1990s, I worked the midnight shift with the RPD. Most of the officers went to a 24-hour restaurant located in another jurisdiction. Local law enforcement officers regularly ate there and accepted offers of a half-price meal. The employees constantly charged RPD officers half price, even though we repeatedly said we did not accept them. When officers tried to pay their bills, they had to go through a big ordeal to have their receipts changed to reflect the full price. It caused

a constant problem for the officers and myself. About every 2 months, I met with the night manager (they often changed) and threatened to ban my officers from the restaurant. Consequently, some officers justified taking a half-price meal by leaving a comparable tip, which I believe is the easy way out. Most officers did leave the large tip, but only because they did not want to go through the hassle of getting the receipt corrected. A gratuity policy clearly must be understood by both law enforcement and the private sector to achieve success—avoiding the problem does not solve anything. Further, even if officers leave a large tip, technically, they still are accepting a half-price meal.

In another instance, about 2 years ago, I left the office late, was still in my uniform, and met my wife at a restaurant. After our meal, I looked at the receipt and noticed the half-price amount. I talked to the young man who rang up our ticket, explained our policy on gratuities, and said how much I appreciated the gesture. For several minutes, I explained our policy and expressed appreciation for his action even though I would have to pay full price. The young man respectfully listened the entire time I talked. When I finally finished, he politely informed me that Wednesday night was half-price night for everyone who buys a sandwich. He did not give me a law enforcement discount because every customer received the same service. Needless to say, I was extremely embarrassed. A policy against gratuities is much larger than the policy itself—daily practice is difficult.

Conclusion

Policies regarding gratuities vary throughout the law enforcement profession. Obviously, I believe in a policy against gratuities. But, does

that mean officers should reject all offers, including acts of kindness? To the contrary, departments should take a stance against gratuities, but ensure that their personnel use common sense. Also, they should keep in mind that although gratuities can lead to corruption, that should not be the primary reason to decline them. Instead, agencies should adopt policies that reject them because it is the right and honorable thing to do. I would like to end

with a quote from H. Scott Kingwill, publisher of *Law and Order*, “Police occupy a special spot in our society; they are highly visible and represent what is decent in our way of life. As representatives of the law, they must set an example of living by the law. Accepting petty gratuities, while seeming to be a harmless ‘perk’ of the job, actually takes away a little bit of the shine of the badge. Through the years, law enforcement pay

scales have improved. Officers can afford to pay their way. Pride—in their uniform, department, and position—a plain, old morality, should dictate that they do not engage in this petty practice. That free cup of coffee really is not free. It carries an expensive price in honor and respect.” ♦

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...policies regarding
gratuities vary
in each
law enforcement
agency.

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Endnotes

¹ All definitions appear in John Kleinig, *The Ethics of Policing* (Cambridge, UK: Cambridge University Press, 1996), 165-166.

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Praise and Recognition

The Importance of Social Support in Law Enforcement

By TRACEY G. GOVE, M.P.A.



Mark Twain once said, “I can live for 2 months on a good compliment.” Wise managers in today’s law enforcement agencies will adopt this adage as a means for leading employees. When used effectively, praise holds many benefits. Empirical research, social psychology, manager and employee surveys, and motivational experts repeatedly have proven this fact. A law enforcement agency that

values and implements this ideology will create an environment that helps to alleviate employee stress, improve morale, increase productivity, and retain personnel.

STRESS IN POLICE WORK

Sources

People commonly consider violence and danger or the potential of such the leading antecedents to stress in police work.

Other perceived main stressors include external, uncontrollable factors, such as protracted periods of low activity interspersed with brief periods of excitement. However, analyses of the officers themselves presented a different picture. One study revealed that they perceived most stress as originating within the workplace. Specifically cited were relationships with supervisors. One officer observed, “The most

stressful call is the one that summons you to headquarters.”¹

When officers in both the United States and the United Kingdom listed significant causes of stress, they cited poor and insensitive supervision among the most primary sources.² Additional studies evidencing that management and organizational issues accounted for most workplace stress in the police service have supported these findings. This contradicts the long-held belief that factors external to the law enforcement organization primarily lead to stress.

Consequences

Stress represents a person’s internal response to external stimuli. Typically, stress associated with the rigors of police work is defined as “distress,” which occurs when a person faces challenges beyond regular coping abilities, resulting in taxed biological systems and, in turn, negative mental and physical effects. Some of the key consequences of police stress include—

- cynicism and suspiciousness;
- emotional detachment from various aspects of daily life;
- reduced efficiency;
- absenteeism and early retirement;
- excessive aggressiveness and a related increase in citizen complaints; and

- heart attacks, ulcers, weight gain, and other health problems.³

The police agency also will suffer because of the instances of lower morale, inefficiency, increased absenteeism, and friction with citizens due to rudeness or poor service that ultimately can hurt the department’s public image.

Stress also exacts far-reaching burdens as it not only affects officers and agencies but also harms families of law enforcement personnel. This holds particularly true for their spouses, who often experience unusually high levels of stress due to the police occupation.⁴

PRAISE REAPPRAISED

Fortunately, unlike many of the external stressors of police work, managers can improve

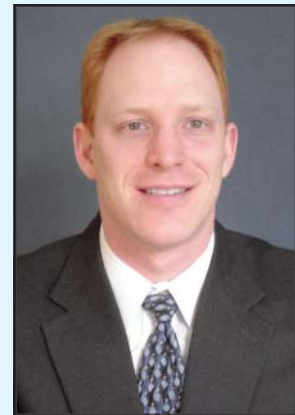
their supervisory skills, and organizations can provide a more supportive environment for their employees. In this regard, praise—although not a panacea for the mental and physical ailments common to police officers—has proven to have many benefits that should bear the attention of today’s progressive police managers.

Societal changes have resulted in police agencies moving away from the paramilitary structure of years past. Today’s more-educated officers hold degrees in a variety of areas. Gone are the days when a majority of police applicants held prior military experience, accustomed to taking orders without question. Agency leaders now utilize coaching and mentoring programs better served to influence desired

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Praise not only promotes physical and mental well-being but also improves motivation.

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Sergeant Gove serves with the West Hartford, Connecticut, Police Department.

behavior. This manner of leading requires praise to build self-esteem within the developing officer.

Mental and Physical Health

Ample proof exists that stress has debilitating effects on health and well-being. However, empirical studies also have shown that simply using forms of social support, such as praise, within the workplace can mitigate the effects of job stress on physical and mental health.⁵ To this end, evidence uncovered a substantial buffering effect whereby social support acts to cushion the blow and make the perception of stress less severe.

Additionally, studies have found that workers with lower levels of social support within the workplace suffered a higher prevalence of cardiovascular disease in strenuous jobs, such as police work, where high demands mix with low control.⁶ The implications and benefits of social support are obvious as experts cite cardiovascular disease as the leading killer of Americans.⁷

Morale, Motivation, and Employee Retention

Praise not only promotes physical and mental well-being but also improves motivation. A recent survey found that “nearly 100 percent of respondents agree or strongly agree that giving recognition can make

an impact on employee morale.”⁸ Additionally, empirical studies have shown that both American and English workers respond favorably to praise and that it does, in fact, influence job performance.⁹

Unfortunately, some managers fail to focus on employee motivation until morale sinks, motivation becomes lost, and, ultimately, employees quit.¹⁰

A reactive response to morale issues, versus a more proactive



approach, will make the task of improving employee attitudes more difficult than if supervisors nurture behavior and performance from the start.

The importance of employee retention represents another issue facing police managers. Limited job praise and recognition rank as primary reasons why employees leave.¹¹ Officers who receive ineffective or no praise more likely will believe

that “the grass is greener” in another agency and will have no feelings of loyalty to their current employer. This can result in employee turnover, negatively affecting the department. Ultimately, it will cost the agency in new employment, training, and equipment.

Internal Versus External Awards

Some police officers will claim that in lieu of praise and recognition, they would rather receive rewards in their paychecks. Does this mean that money serves as a stronger motivator? Surveys do not bear this out. In studies dating back to the 1940s, recognition and appreciation always have outranked salaries.¹² One recent study of 1,500 employees in various work settings revealed that personalized, instant recognition from managers served as the most powerful motivator of 65 potential incentives evaluated, followed by a letter of praise written by the manager.¹³

Of course, money would motivate if the employer did not pay a fair salary. However, once basic monetary needs are met, money becomes less important. Money is an *extrinsic* motivator—once it is given, it will become expected. Eventually, if money is withheld, employees will see this as a punishment and the reinforced behavior will stop. However, praise increases

personal esteem that then becomes an *intrinsic* motivator—even if praise temporarily stops, the stock of personal pride developed will motivate and ensure productivity.

In this regard, Abraham Maslow, a humanistic psychologist, explained motivation as a series of needs. In his scheme, lower-order needs, such as physiological, safety, and love, first must be met. Once these become satisfied, they cease to motivate.¹⁴ Fair compensation accords some of these lower-order needs. Higher-order needs, such as self-esteem and self-actualization, then motivate. Praise and recognition build esteem needs. Once satisfied, people seek a state of self-actualization where a desire exists to test their potential. Compensation alone will not build this motivation.

Frederick Herzberg, an organizational theorist, further supports the benefits of praise over money. He saw two variables functioning within the work setting. Salary represents a “hygiene,” or “maintenance,” factor, something that acts as an incentive only to do what is required. If agencies meet all hygiene factors, officers are not motivated—they simply are not dissatisfied.¹⁵ Praise and recognition, however, are motivators that impel people to do their best work.¹⁶

PRAISE IN THE WORKPLACE

Breaking Down Barriers

In an ideal work setting, praise will come from the top and work down. However, if managers do not receive praise themselves, they may not know how to give it. Further, they may feel that because it does not represent part of their department’s culture, it is not

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part of their job. Also, supervisors are even more prone to stress due to additional pressures required by their position. They confront the same work environment as officers, but with additional responsibilities, including facing the consequences for decisions they have made and being caught between the wants and needs of administrators and subordinates.

Additionally, administering praise properly requires

supervisors to publicly talk about feelings. In doing so, they make themselves vulnerable to others, a condition some may find difficult and intimidating, particularly in an occupation where, for years, they have hidden emotion to be effective police officers.¹⁷ Many will consider it necessary to learn and then practice giving praise.

All levels of leadership should educate, model, demonstrate, and reinforce recognition and feedback skills.¹⁸ Additionally, not only should everyone from the chief down provide recognition but command-level staff should hold supervisors responsible for providing officer recognition. Praise opens lines of communication, which builds trust—leading to motivation. Employees are the product of their environment. Supervisors, especially first-line ones, have the opportunity to make an impact and to create a supportive workplace. Progressive leaders will initiate this environment even if it is not pervasive throughout the agency.

Administering Praise

To have maximum effect, supervisors must give praise correctly. To this end, they can gauge their efforts by six important characteristics.

- 1) Timely: Praise should immediately follow the laudable behavior and be

specific. This will ensure that the individual will know and likely repeat the desired behavior.

2) Appropriate: Supervisors should not give an expression of praise without reason or base it solely on personality. Further, they must consider their relationship with the officer (e.g., for a turbulent relationship, managers must give the praise carefully so that the employee will see it as sincere).

3) Given separately: Managers must not correct poor performance when giving praise. Of course, when disciplining an officer, kind words can help cushion the blow. However, supervisors must carefully separate these instances; if not, employees will accept future praise with caution as they steel themselves for the anticipated criticism to follow. They also may suspect insincerity.

4) Administered regularly: Supervisors should praise not only spectacular acts of courage but daily acts of solid police work on routine calls. A type of Pygmalion effect, or self-fulfilling prophecy, then will follow. As officers receive recognition more often for good work, it will build their

confidence and help to increase performance.

5) Sincere: As trained observers keenly aware of human behavior, police officers can detect insincerity and will question the validity of contrived praise. Also, managers should not confuse praise with flattery—insincere praise used largely to win favor. Praise must be honest, straightforward, and spoken from the heart.

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Ample proof exists that stress has debilitating effects on health and well-being.

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6) Public or private: Supervisors usually should give praise publicly. This can build esteem and encourage others to strive for similar recognition. However, managers must proceed with caution as some people truly dislike public attention and may prefer praise in private. The type of recognition must match the personality. For instance, if during public praise an individual appears uncomfortable,

agitated, or defensive, a change to private recognition likely will elicit a different response.

Methods of Delivery

Face-to-face, spontaneous praise represents the easiest and, more important, the most desired form. Administering it in the presence of upper-level managers can help to bolster the purpose of recognizing the behavior. Supervisors also can give written recognition. For an officer who may prefer private praise, department e-mail and voice mail systems offer less intrusive means of communication.

Supervisors also can consider less spontaneous, more formal ways to recognize officers using departmental resources. These include—

- an article in the department newsletter, be it official or unofficial;
- a posted message on an internal or external Web site;
- a letter written by the chief on the recommendation of a supervisor;
- a publicly exhibited “wall of fame” board displaying letters of commendation and citizens’ letters of recognition; and
- roll-call praise, if all members of a shift performed well on a recent task.

CONCLUSION

Common sense should deem a quick pat on the back for a job well done not only deserved but necessary. Studies and surveys have proven the results of such reinforcing behavior stronger than once believed. Social support in the form of recognition and praise serves to increase morale, motivation, and productivity. Consequently, the physical and mental health of employees improve and organizations are better served and run more efficiently.

Police work represents a stressful, difficult, and, at most times, unforgiving occupation. Managers need to recognize officers for their commitment to service and show them their value to the agency. Praise delivers this message and costs nothing but compassion. Effective police leaders will value and demonstrate this ideology. ♦

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Wanted: Photographs



The *Bulletin* staff is always on the lookout for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

We can use either black-and-white glossy or color prints or slides, although we prefer prints (5x7 or 8x10). We will give appropriate credit to photographers when their work appears in the magazine. Contributors should send duplicate, not original, prints as we do not accept responsibility for damaged or lost prints. Send photographs to:

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Bulletin Reports

Corrections

The Bureau of Justice Statistics presents *HIV in Prisons and Jails, 2002*. This annual bulletin provides the number of HIV-positive and active AIDS cases among state and federal prisoners at year-end 2002. It features the number of AIDS-related deaths in prisons, a profile of those inmates who died, the number of female and male prisoners with AIDS, and a comparison of AIDS rates for the general and prisoner populations. Based on the *2002 Survey of Inmates in Local Jails*, the report contains estimates of HIV infection among jail inmates by age, gender, race, education, marital status, current offense, and selected risk factors, such as prior drug use. It also includes information on AIDS-related deaths among jail inmates. Highlights include the following: between 1998 and 2002, the number of HIV-positive prisoners decreased about 7 percent, while the overall prison population grew almost 11 percent; at year-end 2002, 3 percent of all female state prison inmates were HIV positive, compared to 1.9 percent of males; and in 2002, the overall rate of confirmed AIDS among prisoners (.48 percent) was nearly 3.5 times the rate in the U.S. general population (.14 percent). This publication is available online at <http://www.ojp.usdoj.gov/bjs/abstract/hivpj02.htm> or by contacting the National Criminal Justice Reference Service at 800-851-3420.

Sexual Offenses

The Office of Community Oriented Policing Services (COPS) presents *Illicit Sexual Activity in Public Places*, which describes the problem of illicit public sexual activity and the factors that contribute to it, including participants, locations, motivations, and transactions. This guide also poses a number of questions to help understand the issue and identifies numerous responses to the problem and ways to measure their effectiveness. This report is available online at <http://www.cops.usdoj.gov/mime/open.pdf?Item=1460>.

Bulletin Reports is an edited collection of criminal justice studies, reports, and project findings. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Room 201, Madison Building, FBI Academy, Quantico, VA 22135. (NOTE: The material in this section is intended to be strictly an information source and should not be considered an endorsement by the FBI for any product or service.)

Forensics

Census of Publicly Funded Forensic Crime Laboratories, 2002 reports on the organization, functions, budget and expenditures, staffing, workload, and forensic backlog in the nation's more than 350 publicly funded crime laboratories. Additional topics include contracting with external labs, quality control, training, and research conducted by public forensic laboratories. This publication compliments earlier data collections and statistical reports from the Bureau of Justice Statistics documenting similar issues in forensic DNA laboratories. Highlights include the following: 91 percent of outsourced requests were DNA-related, including nearly 13,000 casework requests and 205,000 convicted offender samples in the Combined DNA Index System (CODIS); a typical laboratory in 2002 started the year with a backlog of about 390 requests, received 4,900 additional ones, and completed 4,600; and 41 percent of publicly funded laboratories in 2002 reported outsourcing one or more types of forensic services to private labs. This report is available online at <http://www.ojp.usdoj.gov/bjs/abstract/cpffc102.htm> or by calling the National Criminal Justice Reference Service at 800-851-3420.

Violence

The National Institute of Justice (NIJ) presents *Reducing Gun Violence: Operation Ceasefire in Los Angeles*, which highlights the recent effort—based on Boston's successful program—that focused on an area of the city experiencing high rates of gun violence and homicide. Researchers joined with federal, state, and local authorities and community groups to design an intervention targeting gangs involved in the violence. These efforts included prevention services and intensive law enforcement to deter gun crime. Participants also promoted the message that all gang members would be held accountable if any one of them engaged in violence. Results were mixed, partly because events precipitated the intervention before the services component was ready. This NIJ report describes the program and how government agencies, community groups, and researchers can form lasting partnerships to address violence. This report is available online at <http://www.ojp.usdoj.gov/nij/pubs-sum/192378.htm> or by contacting the National Criminal Justice Reference Service at 800-851-3420.

“Deliberate Indifference”

Liability for Failure to Train

By MARTIN J. KING, J.D.



In virtually every instance where a person's constitutional rights were violated by a police officer, a plaintiff will be able to point to something the employing entity—county or municipality—could have done to prevent the unfortunate incident. Frequently, where the alleged violation of rights is caused by the use of force by a police officer, the injured party will attempt to hold the county or municipality responsible by asserting that the harm caused could have been avoided by a more adequate training

program. This article addresses the issue of county or municipal liability under the federal statute Title 42, United States Code, Section 1983 (hereinafter Section 1983), which permits individuals to hold government employees and, in some cases, their employers accountable for violation of rights secured by the U.S. Constitution.¹ In particular, this article explores the contours of employer liability for claims that the constitutional violation was caused by a failure to adequately or properly train employees.

In resolving the issue of liability for failure to train, focus is placed on the adequacy of the training program in relation to the tasks particular officers must perform. However, it is not enough to merely show that a situation will arise and that an officer taking the wrong course of action in that instance will result in injuries to citizens. Even adequately trained officers occasionally make mistakes; the fact that they do says little about the training program or the legal basis for holding a city or county liable for that mistake.

A city or county will not be liable simply because it employed the officer whose actions resulted in a deprivation of a citizen's constitutional rights. Rather, a plaintiff must establish that government policymakers either were or should have been aware that a training program was inadequate and did little or nothing about the problem. Which is to say, policymakers were deliberately indifferent to the harm that would likely result from the failure to train.²

"Deliberate indifference" is a standard of fault that requires a showing that government policy makers acted with conscious disregard for the obvious consequences of their actions.³ A pattern of constitutional violations by officers may indicate that a lack of proper training, rather than a one-time negligent administration of the training program or factors peculiar to the officer involved in a single incident, is responsible for the plaintiff's injury.⁴ If a training program does not prevent constitutional violations and a pattern of injuries develops, officials charged with the responsibility of formulating policy for the agency may be put on notice that a new program is needed and a failure to address the problem may constitute deliberate indifference.⁵ In the absence of a pattern of violations, deliberate

"...a plaintiff must establish that government policymakers...were... aware that a training program was inadequate and did little or nothing about [it]."



Special Agent King is a legal instructor at the FBI Academy.

indifference may be inferred from the policy makers' continued adherence to a training program that they knew or should have known would fail to prevent violations in usual or recurring situations.⁶ In such cases, the constitutional violation must be a highly predictable or plainly obvious consequence of the failure to train.

A training program must be quite deficient for the deliberate indifference standard to be met. To hold the city or county liable, a plaintiff must show that the level of training was so deficient that it fell below what is constitutionally acceptable. Liability does not attach where an otherwise adequate training program has occasionally been negligently administered. Neither will it suffice to prove that an injury or accident could have been avoided if an officer had received better or more training sufficient to equip the officer to

avoid the particular injury-causing conduct.⁷ The fact that training was imperfect or not in the precise form that a plaintiff would prefer is insufficient to make a showing of deliberate indifference.⁸ Such second-guessing could be made about almost any encounter resulting in injury.

While a city or county may be exposed to liability only when it deliberately ignores the obvious consequences of the inadequacies of its training program, there is no neat set of rules that permits a city or county to determine with precision when a consequence will be deemed obvious. Predicting how a hypothetically well-trained officer would act under a specific set of circumstances is no easy task, particularly because matters of individual judgement may be involved. Nevertheless, one guiding principle is that by

choosing the deliberate indifference standard of liability for Section 1983 claims, the U.S. Supreme Court has made it difficult for individuals to hold city and county governments liable for violations of rights secured by the U.S. Constitution based on an alleged failure to train.

Employer Liability Under Section 1983

In *Monell v. Department of Social Services of City of New York*, the U.S. Supreme Court established the fundamental principle in the law of municipal liability under Section 1983 that local governments may be held liable only for their own conduct and not merely for the conduct of their employees.⁹ That is, the government entity is not vicariously liable for the actions of its police officers simply because it employed the officer and the harm was caused while the officer was acting within the scope of his or her employment. Instead, liability only attaches to the county or city for injury caused by actions or omissions attributable to the government itself.¹⁰ Government (as opposed to individual) liability under Section 1983 is restricted only to those cases in which “the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or

promulgated by that body’s officers.”¹¹ Government conduct by way of its policy, in addition to the individual employee’s conduct that directly resulted in the harm, must be identified as causing a violation of a recognized constitutional right.¹²

A plaintiff seeking to find a city or county government liable under Section 1983 must establish a causal connection between the injury and a government policy or custom.¹³

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...a plaintiff must show that the level of training was so deficient that it fell below what is constitutionally acceptable.

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Locating a policy ensures that liability attaches only for those deprivations of constitutional rights resulting from the decisions of its duly constituted legislative body or of those officials whose acts may fairly be said to be those of the government itself.¹⁴ City or county government liability under Section 1983 attaches “where—and only where—a deliberate choice to follow a course of action is made from among

various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question.”¹⁵ The assessment of what official possesses final authority to establish policy is determined by state law. The discretionary decisions of lesser officials will not be imputed to the agency as actionable policy.¹⁶

Identification of a “Policy”

Generally, three possible avenues are open to plaintiffs to show the existence of a “policy” that allegedly caused a constitutional violation.

- 1) An express written policy or an actual directive from a policy-making official that, when enforced, causes a constitutional violation—in short, an unconstitutional policy. Where a plaintiff can demonstrate that an existing policy is itself unconstitutional when applied as intended or that a specific action taken or directed by the government itself violated a citizen’s constitutional rights, resolving the issues of fault and causation is relatively straightforward. In these cases, there is clear governmental action that can be attributed as the cause, or moving force, behind the injury of which the plaintiff complains.¹⁷ A policy also can be inferred

even from a single decision made by the highest official responsible for setting policy within that area of a government's business.¹⁸

2) Widespread conduct that results in violations of constitutional rights, although not authorized by any written law or policy, that is so permanent and well-settled as to constitute a custom or practice with the force of law may serve as the functional equivalent of a written policy.¹⁹ Essentially, a practice of condoning constitutional violations must be established. Because a custom or practice must be established, evidence of only a single alleged incident, particularly if it involved only actors below policy-making level, will typically not be sufficient.

3) An inadequate written policy or a practice that is not unconstitutional itself but which reflects deliberate indifference to persons' constitutional rights because the deficiency causes officers to violate constitutional rights.²⁰ This is often difficult for plaintiffs to establish because the deprivation of rights is allegedly caused not by affirmatively unconstitutional acts attributable to the government but by omissions or failure to take

adequate steps to safeguard constitutional rights.²¹ Most failure-to-train cases fall into this category. Few training programs are unconstitutional when applied as intended. For example, a county or municipality will rarely have an express written or oral policy permitting the excessive use of force. Thus, for



liability to attach, it is necessary to establish the existence of a custom or practice—a policy—that permitted excessive force to occur by demonstrating that the municipality deliberately failed to adequately train its police officers in a relevant respect.²²

“Deliberate Indifference” as “Policy”

In *City of Canton v. Harris*,²³ the U.S. Supreme Court established deliberate

indifference as the standard required to show the existence of a policy or custom when a constitutional violation allegedly results from a failure to train. The Court described this standard as follows:

Only where a failure to train reflects a “deliberate” or “conscious” choice by a municipality—a “policy” as defined by our prior cases—can a city be liable for such failure under Section 1983. *Monell*'s rule that a city is not liable under Section 1983 unless a municipal policy causes a constitutional deprivation will not be satisfied by merely alleging that an existing training program for a class of employees, such as police officers, represents a policy for which the city is responsible.... [I]t may happen that in light of the duties assigned to specific officers or employees, the need for more or different training is so obvious, and the inadequate training so likely to result in the violation of constitutional rights, that the policy makers of the city can reasonably be said to have been deliberately indifferent to the need. In that event, the failure to provide proper training may fairly be said to represent a policy for which the city is responsible, and for which

the city may be held liable if it actually causes injury.²⁴

Liability should attach only if the failure to train is a “deliberate choice to follow a course of action,” and this failure to train must have led to—caused—the injury in question.²⁵ This standard ensures that isolated instances of misconduct are not attributable to a generally adequate policy or training program. The deliberate indifference standard requires a high degree of culpability on the part of the policy maker. A plaintiff must not only establish defects in training procedures but also that policy makers did nothing to cure those defects when they knew or should have known that violations of constitutional rights would be the obvious result. For example, where there has been a demonstrable effort to train officers to handle usual and recurring situations, evidence of a single alleged incident involving excessive use of force by an officer typically will not suffice to prove deliberate indifference that equates to a policy permitting the excessive use of force.

After the 20-week basic-training course, the city required...all officers to attend an annual 3-day training program that provided updated information on laws concerning arrest, detention, and search and

seizure. [The plaintiff] has provided no evidence of defects in the city’s training procedures. [The plaintiff] has shown neither that decision makers continued to adhere to a training program they know or should have known had failed to prevent officers’ use of force, nor that a

“The deliberate indifference standard requires a high degree of culpability on the part of the policy maker.”

pattern of tortious conduct by inadequately trained officers indicated lack of proper training. At most, [the plaintiff] has shown a single violation of federal rights, which does not alone permit an inference of municipal culpability and causation. [The plaintiff] has shown that only [the officer] may have acted culpably, not the city.²⁶

Taken together, the often intertwined considerations of fault in the form of deliberate indifference and causation amount to a requirement that liability be based on a finding

that the policy makers have actual or constructive notice that a particular inadequacy in a training program is likely to result in a constitutional violation.²⁷ Therefore, in addition to establishing a constitutional violation, a plaintiff must make the following showings to proceed against a government employer under a failure-to-train theory.²⁸

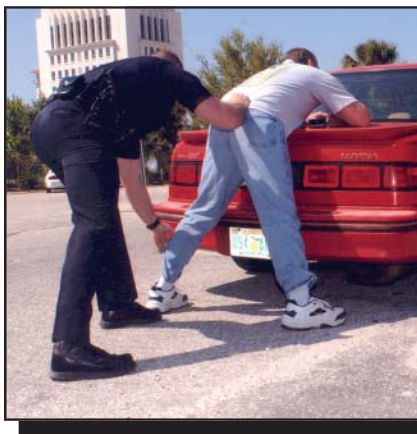
- 1) Inadequate training: Training must be shown to be deficient in a relevant respect given the injury sustained. The focus is on the deficiencies in the training program itself, not on whether the particular officer involved was adequately trained.
- 2) Causation: The failure of the program to provide training caused the injury. That is, the injury would have been avoided had the employee been trained under a program that was not deficient in the identified respect.
- 3) Deliberate indifference: The inadequate training program must be a “policy” of the municipality. This is demonstrated by circumstances that evidence that policy makers—individuals with final decision-making authority in the respective area of municipal responsibility—knew or should have

known about the need for the identified training but remained deliberately indifferent to that need.

In *Canton*, the Court used training on deadly force to illustrate the standard of deliberate indifference. The Court noted that “city policy makers know to a moral certainty that their police officers will be required to arrest fleeing felons.”²⁹ Moreover, “[t]he city has armed its officers with firearms, in part to accomplish this task.”³⁰ In such a situation, “the need to train officers in the constitutional limitations on the use of deadly force...can be said to be ‘so obvious’ that a failure to do so would properly be characterized as ‘deliberate indifference’ to constitutional rights.”³¹ Even where the need to train would not be obvious to a stranger to the situation, a particular context—such as a documented pattern of violations—might make the need for training or supervision so obvious to a policymaker that a failure to do so would constitute deliberate indifference. Thus, the Court suggested that “[i]t could also be that the police, in exercising their discretion, so often violate constitutional rights that the need for further training must have been plainly obvious to the city policy makers, who nevertheless, are ‘deliberately indifferent’ to the need.”³²

The “Deliberate Indifference” Standard

It is possible to discern three closely related requirements that must be met before a failure to train will constitute deliberate indifference to the constitutional rights of citizens.³³ First, the plaintiff must show that policy makers know to a moral certainty that their employees will confront a given situation as opposed to rare or unforeseen



events. Second, the plaintiff must show that the situation either presents the employee with a difficult exercise of judgment that training will make less difficult, or that there is a history of employees mishandling the situation. There must be awareness of a problem that is susceptible to improvement through training. Third, the plaintiff must show that the wrong choice by the employee is likely to cause the deprivation of a citizen’s constitutional

rights. Training resources may appropriately be concentrated on those situations where an error in judgement by an officer is likely to result in a constitutional violation. Where a plaintiff can establish all three elements, then it can be said that the policy maker should have known that inadequate training was “so likely to result in the violation of constitutional rights, that the policy makers... can reasonably be said to have been deliberately indifferent to the need.”³⁴

In *Zuchel v. City and County of Denver, Colorado*,³⁵ the U.S. Court of Appeals for the Tenth Circuit, found that a city police department was deliberately indifferent due to its inadequate training of police officers as to the practical aspects regarding use of deadly force. The court concluded that the circumstances giving rise to an unconstitutional shooting of a suspect by a police officer represented a usual and recurring situation with which city police officers were required to deal, so that the city could be liable under Section 1983 for the officer’s actions. In reaching this conclusion, the court referred to a letter from the district attorney to the city police chief discussing six police officer-citizen encounters involving deadly force that had occurred in a 6-week period and recommending that periodic

shoot-don't-shoot live training should be made part of the training program to minimize unjustified shootings. In addition, testimony from the district attorney was provided at trial to the effect that it was foreseeable that officers would be placed in situations where they would have to make decisions on whether to shoot. An expert also testified that it was predictable in large cities that police officers would encounter situations in which they would have to make judgements as to whether to shoot.³⁶ Prior to the incident, the department's shoot-don't-shoot training consisted of a lecture and a movie presented to officers during basic training at the police academy. The inadequacies of that training program were identified by an expert witness as the cause of the shooting in question. The witness offered the opinion that strategic judgement cannot be taught in a classroom—particularly based only on the showing of a single film—and that the officer, due to lack of training, handled the situation with the suspect as a layperson, rather than a trained professional.³⁷

The city argued that as a matter of law, it could not be found deliberately indifferent because it had some shoot-don't-shoot training and, thus, recognized the problem and was addressing it. The court rejected

this argument, finding that the city did not properly apply the definition of deliberate indifference under *Canton*. In establishing deliberate indifference, focus must be placed on whether the need for more or different training is so obvious, and the inadequacy so likely to result in the deprivation of constitutional rights, that the policymakers can be said to have been deliberately indifferent to the need.

“The inadequacies of that training program were identified by an expert witness as the cause of the shooting in question.”

“Thus, a city is deliberately indifferent if 1) its training program is inadequate and 2) the city deliberately or recklessly made the choice to ignore its deficiencies.”³⁸ In this case, the court concluded that the testimony underscored the obviousness of the deficiency of the existing training program. The district attorney's letter expressly recommended that the police department institute expanded training in the areas of “strategic skills development;

how to analyze situations, develop options, and select the option that minimizes the likelihood of a violent confrontation” and “periodic target course ‘shoot-don't-shoot’ live training under street conditions.”³⁹ Because the police department presented no evidence of any attempt to address the deficiencies of its training program, the court found that the evidence was sufficient to permit a jury to reasonably infer that the city's failure to implement some form of periodic live training constituted deliberate indifference to the constitutional rights of the city's citizens.⁴⁰

A finding of deliberate indifference requires that the government has disregarded a known or obvious risk of harm caused by its failure to develop an adequate training program. However, a showing of specific incidents that establish a pattern of constitutional violations is not necessary to put a municipality on notice that its training program is inadequate. A single violation of constitutional rights combined with a failure to train officers to handle that situation is sufficient to trigger municipal liability if the situation was likely to occur and presented an obvious potential for a constitutional violation.⁴¹

In *Young v. City of Providence*, the First Circuit Court of Appeals recently addressed the

issue of municipal liability in a Section 1983 action in which there was no evidence of a prior similar constitutional violation.⁴² *Young* involved a wrongful death action alleging excessive force after the victim, who was an off-duty officer responding to an incident under the city's always armed/always on-duty policy, was shot by two other officers who were responding to the same incident. The city had a use-of-force training program in place that included judgmental shooting. This training consisted of interactive video simulation and live range exercises that included don't-shoot scenarios. However, the city did not provide training that specifically addressed identification of officers responding under its' always armed/always on-duty policy and had no protocols in place governing off-duty officer response situations.⁴³

Although there was no evidence of a past friendly fire shooting, the court concluded that a jury could find deliberate indifference because "the department knew that there was a high risk that absent particularized training on avoiding off-duty misidentifications, and given the department's always armed/always on-duty policy, friendly fire shootings were likely to occur."⁴⁴

Young illustrates a number of factors that are considered

when imputing government knowledge of an obvious risk of harm as required to show deliberate indifference. Even when there have been no prior violations, where a policy or practice of a police department creates an obvious risk of harm, where training would tend to reduce that specific type of harm, and where the wrong decision of an untrained officer will likely result in flagrant violations of constitutional rights, a municipality may be



deemed deliberately indifferent if it does not afford some training that specifically addresses the particular potential for harm. In *Young*, there was evidence presented that the always armed/always on-duty policy was inherently dangerous because without specific training, it was likely that off-duty officers would intervene unwisely and that on-duty officers may mistake them for suspects. Indeed, the city also changed its

always-armed/always on-duty policy after the friendly fire incident such that officers were not required to carry firearms while off duty and provided a specific protocol for any off-duty action that was taken.⁴⁵

Although there had been no prior friendly fire incidents, there was evidence presented that the city was aware that such incidents were predicable based on numerous reports from police officers of past misidentifications of off-duty personnel that did not end with tragic results. The city was, therefore, deemed to be on notice that interactions between off-duty and on-duty officers were probable (a "usual and recurring situation with which its officers were required to deal").⁴⁶ Further, interactions between on-duty and off-duty officers are typically high stress situations. In such incidents, officers tend to fall back on training. That being the case, specific training would likely reduce the inherent dangerousness posed by intervening armed, off-duty officers. The severity of the consequences of a friendly fire incident were obvious and the need to train to avoid such an occurrence was acknowledged by testimony of police personnel responsible for training.⁴⁷

Deliberate indifference will not be imputed to a city or county government based on

its failure to afford specific training to better handle unprecedented occurrences. An example is afforded by the Fifth Circuit case *Cozzo v. Tangipahoa Parish Council*,⁴⁸ which involved alleged violations of Fourth and Fourteenth Amendment rights stemming from a clearly unlawful eviction following a police captain's allegedly erroneous interpretation of the requirements of a temporary restraining order in a domestic case. Although the plaintiff was able to establish that there was a failure to set any specific rules or guidance regarding the actions allowed when enforcing restraining orders in domestic cases and that there was a direct causal connection between the lack of training and the alleged violation, the court found that there was no basis for municipal liability due to the unprecedented nature of the incident.⁴⁹ An unlawful eviction pursuant to a captain's interpretation of a restraining order had never before occurred in more than 20 years of documented sheriff's department history.⁵⁰ There was no deliberate indifference given the lack of prior similar constitutional violations and no evidence to support a finding that constitutional violations were a predictable consequence of a failure to afford specific training in the interpretation of temporary restraining orders.

Conclusion

Liability for failure to train will be imposed when it can be demonstrated that a municipal policymaker knew or should have known that inadequate training was so likely to result in the violation of constitutional rights that the policy maker can reasonably be said to have been deliberately indifferent to the need. The inadequacy of the training program must be obvious and likely to result in a constitutional violation.

“...a municipality may be deemed deliberately indifferent if it does not afford some training that specifically addresses the particular potential for harm.”

Although deliberate indifference is most often found in cases that involve inaction in the face of a pattern of prior similar constitutional violations, a failure to act that results in a single unprecedented incident can support a finding of deliberate indifference where the constitutional violation was a highly predictable consequence of a failure to train. ♦

Endnotes

¹ Title 42, U.S.C., § 1983 provides in pertinent part: “Every person who, under color of any statute, ordinance, regulation or custom or usage of any State...subjects or causes to be subjected, any citizen of the United States or other person...to the deprivation of any rights, privileges and immunities secured by the Constitution and laws shall be liable to the party injured in any action at law....”

² *City of Canton v. Harris*, 489 U.S. 378, 109 S. Ct. 1197, 103 L.Ed. 2d 412 (1989).

³ See *Board of County Commission of Bryan County Oklahoma v. Brown*, 520 U.S. 397, 117 S. Ct. 1382, 137 L.Ed. 2d 626 (1997).

⁴ *Id.* at 407-408

⁵ *Id.* at 409.

⁶ *Id.*

⁷ See *Palmquist v. Selvik*, 111 F.3d 1332, 1345 (7th cir. 1997) (Where town gave police some training on handling suspects exhibiting abnormal behavior, argument that even more training should have been given failed.).

⁸ See *Canton* 489 U.S. at 391; *Young ex rel. Estate of Young v. City of Providence*, 404 F.3d 4, 27 (2005); *Grazier v. City of Philadelphia*, 328 F.3d 120, 125 (3rd Cir. 2003).

⁹ 436 U.S. 658, 690, 98 S. Ct. 2018, 2035-36, 56 L.Ed. 2d 611 (1978) (In *Monell*, the Supreme Court held that municipalities and other local governmental bodies are “persons” within the meaning of § 1983 and, therefore, are subject to liability based on their actions or policies that subjected a person to a deprivation of a constitutional right but that they are not liable merely because they employed the person who actually inflicted the deprivation.).

¹⁰ *Id.* at 689.

¹¹ *Id.* at 691, 694.

¹² See *Collins v. City of Harker Heights*, 503 U.S. 115, 120, 112 S. Ct. 1061, 117 L.Ed. 2d 261 (1992) (It should be stressed that a local government's failure to train that results in injury to a

plaintiff is not actionable under § 1983 unless the failure led to a violation of an established constitutional right that, in turn, caused the plaintiff's injuries.).

¹³ *Monell*, 436 U.S. at 693-94.

¹⁴ *Id.* at 694.

¹⁵ *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483, 106 S. Ct. 1292, 1298 (1986).

¹⁶ *See City of St. Louis v. Praprotnik*, 485 U.S. 112, 108 S. Ct. 915, 99 L.Ed. 2d 107 (1988).

¹⁷ *See Brown*, 520 U.S. at 407-408.

¹⁸ *See Pembaur* at 475 U.S. 480 (In ordering deputy sheriffs to enter physician's clinic without a warrant to serve capiases on third parties in an investigation of alleged welfare fraud, county prosecutor was acting as final decision maker for county; therefore, county could be held liable under § 1983 for alleged violation of physician's Fourth Amendment Rights based on that single directive.).

¹⁹ *See Jett v. Dallas Independent School Dist.*, 491 U.S. 701, 109 S. Ct. 2702 (1989) (It is for a jury to determine whether policy making officials' decision have caused the deprivation of rights at issue 1) by policies that affirmatively command it to occur or 2) by acquiescence in a *longstanding practice or custom* that constitutes the standard operating procedure of the local governmental entity.); *ODonnell v. Brown*, 335 F.Supp. 2d 787, 816 (W.D. Mich. 2004).

²⁰ *See Canton*, 489 U.S. at 387 (*Canton* expressly rejected the argument that a city is liable only when the municipal policy is itself unconstitutional. Rather, "if a concededly valid policy is unconstitutionally applied by a municipal employee, the City is liable if the employee had not been adequately trained and the constitutional wrong has been caused by a failure to train."); *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 822-823, 105 S. Ct. 2427 (1985).

²¹ *Brown*, 520 U.S. at 411 (Due to difficulty in establishing causation,

inadequate screening of a reserve deputy applicant by county sheriff does not necessarily lead to liability on the part of the county for injury caused by that reserve deputy. For a finding of liability, the plaintiff must establish 1) a constitutional violation and 2) the specific injury that occurred was the *plainly obvious consequence* of the hiring decision.).

²² *Canton*, 489 U.S. at 388-89.

²³ 489 U.S. 378.

²⁴ *Id.* at 389-390.

²⁵ *Pembaur*, 475 U.S. at 483-84.

²⁶ *Ward v. City of Des Moines*, 184 F. Supp. 2d 892, 898 (S.D. Iowa 2002).

²⁷ *See, e.g., Cornfield By Lewis v. Consolidated High School Dist. No. 230*, 991 F.2d 1316 (7th Cir. 1993) (Student subjected to strip search failed to state a claim establishing deliberate indifference by school district so as to support imposition of liability on failure-to-train theory. Constitutional rights in this area not clearly established and the existence of only two prior incidents of strip searching fell short of a pattern of violations sufficient to put the school board on notice of potential harms to students.).

²⁸ *See Palmquist*, 111 F.3d at 1345.

²⁹ *Canton* 489 U.S. at 390, note 10.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ This three-part test for deliberate indifference based on the language used in *Canton* was enunciated in *Walker v. City of New York*, 974 F.2d 293 (2nd Cir. 1992), *cert. denied*, 507 U.S. 961, 113 S. Ct. 1378, 122 L.Ed. 2d 762 (1993) (Various different tests for municipal liability based on a failure to train have been formulated in several federal circuits; all of these tests obviously contain a deliberate indifference component (*See, e.g., Fraire v. City of Arlington*, 957 F. 2d 1268 (5th Cir. 1992), *cert. denied* 506 U.S. 973, 113 S. Ct. 462, 121 L.Ed. 2d 371; *Allen v. Muskogee, Oklahoma*, 119 F.3d 837 (10th Cir. 1997), *cert. denied*, 522 U.S. 1148, 118 S. Ct. 1165, 140 L.Ed.

2d 176; *Young v. City of Augusta*, 59 F.3d 1160 (11th Cir. 1995); *Atchinson v. District of Columbia*, 73 F.3d 418 (D.C. Cir. 1996)).

³⁴ *Canton* 489 U.S. at 388.

³⁵ 997 F.2d 730 (10th Cir. 1993).

³⁶ *Id.* at 740.

³⁷ *Id.* at 739.

³⁸ *Id.* at 740, note 5.

³⁹ *Id.* at 747.

⁴⁰ *Id.* at 741.

⁴¹ *Allen*, 119 F.3d at 849.

⁴² 404 F.3d 4 (1st Cir. 2005).

⁴³ *Id.* at 8-10.

⁴⁴ *Id.* at 18 (The court cited both the "highly predicable consequence language" of *Brown*, 520 U.S. at 409, and the "know to a moral certainty" language of *Canton*, 489 U.S. at 390 7n.10.).

⁴⁵ *Id.* at 11.

⁴⁶ *Id.* at 10.

⁴⁷ *Id.*

⁴⁸ 279 F.3d 273, 289-290 (5th Cir. 2002).

⁴⁹ *Id.* (The claim with respect to the municipality failed because no municipal policy was shown. The sheriff had the authority as policy maker. There was no express policy that authorized the action taken by the police captain and there was no widespread practice or custom that fairly represented department policy. "Having failed to demonstrate the existence of a policy, the evidence simply did not substantiate a finding that sheriff... implemented a policy so deficient that it was a repudiation of...constitutional rights and was the moving force of the unconstitutional dispossession of property.").

⁵⁰ *Id.* at 290.

Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.

FBI Law Enforcement Bulletin

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The *FBI Law Enforcement Bulletin* is an official publication of the Federal Bureau of Investigation and the U.S. Department of Justice.

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Length: Feature articles should contain 2,000 to 3,500 words (8 to 14 pages, double-spaced). Submissions for specialized departments, such as Police Practice and Case Study, should contain 1,200 to 2,000 words (5 to 8 pages, double-spaced).

Format: Authors should submit three copies of their articles typed and double-spaced on 8 1/2-by 11-inch white paper with all pages numbered. An electronic version of the article saved on computer disk should accompany the typed manuscript. Authors also may e-mail articles.

Authors should supply references when quoting a source exactly, citing or paraphrasing another person's work or ideas, or referring to information that generally is not well-known. For proper footnote format, authors should refer to *A Manual for Writers of Term Papers, Theses, and Dissertations*, 6th ed., by Kate L. Turabian.

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The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.



Sergeant Warner

Sergeant Lewis Warner of the Port Dickinson, New York, Police Department responded to a structure fire. Upon arrival, he immediately radioed that a large two-story commercial and residential building was fully engulfed in flames and that people were trapped in the numerous second-story apartments. Sergeant Warner quickly entered the front door and blindly made his way through the heavy smoke up the stairs and into the second-floor hallway, where he heard the sounds of someone struggling. As he could only hear the distressed resident, Sergeant Warner reached out, took hold of the disoriented man, and escorted him out of the extreme heat and darkness to safety outside. Sergeant Warner demonstrated selflessness and bravery while saving this man's life.



Officer Snyder

Early one morning, Officer Ross Snyder of the Orem, Utah, Department of Public Safety was the first responder to a house fire. Upon arrival, he was notified of a man inside and heard the victim cry for help and advise that he could not walk. Officer Snyder immediately entered the burning house and crawled beneath the dense smoke. He began communicating with the man and using a flashlight as a beacon. The victim advised that he saw the light and that he was in the kitchen. Officer Snyder located the vinyl flooring but had to search the room for the now-unconscious man. After finding him, he carried him outside to safety. The victim was treated for minor injuries and released from the hospital the next day. The brave actions of Officer Snyder saved this man's life.



Corporal Camp

Corporal Roger Camp of the Ouachita Parish, Louisiana, Sheriff's Department responded to an incident involving a girl that had a drug problem and was facing arrest by another law enforcement agency. Corporal Camp was advised that she had left her house and entered the woods while carrying a large amount of prescription medicine that she planned to use to kill herself. He and the victim's father searched the woods until they found the unconscious girl. Corporal Camp lifted the victim and carried her a long distance until he was able to transport her to the hospital. This officer displayed the utmost professionalism during this incident.

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Patch Call



Established in 1854, Leavenworth was the first city in Kansas. The patch of its police department was adapted from the state seal and pictures an outrider following a Conestoga wagon drawn by oxen. This scene represents the numerous wagon trains that traveled the Santa Fe and Oregon Trails through Leavenworth.



The patch of the Palm Bay, Florida, Police Department features a Native American woman scattering flowers. Also pictured are palm trees, a river with a steamboat, a cabbage palmetto tree, and a brilliant sun in the background.